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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID L. MARVIT, ALBERT H. M. REINHARDT,
B. THOMAS ADLER, and BRUCE A. WILCOX

Appeal 2008-005323
Application 10/807,562
Technology Center 2600

Decided:¹ July 27, 2009

Before MAHSHID D. SAADAT, CARLA M. KRIVAK,
and ELENI MANTIS MERCADER, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1-20. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

The Invention

Appellants' invention relates to a handheld device having motion interface for matching remote command gestures with tracked movements to identify a corresponding command to be delivered to a remote receiver. (Spec. 3.) Claim 1, which is representative of the claims on appeal, reads as follows:

1. A handheld device comprising:

a display having a viewable surface and operable to generate an image indicating a currently controlled remote device;

a gesture database maintaining a plurality of remote command gestures, each remote command gesture defined by a motion of the device with respect to a first position of the handheld device;

a gesture mapping database comprising a mapping of each of the remote command gestures to an associated command for controlling operation of the remote device;

a motion detection module operable to detect motion of the handheld device within three dimensions and to identify components of the motion in relation to the viewable surface;

a control module operable to track movement of the handheld device using the motion detection module, to compare the tracked movement against the remote command gestures to determine a matching gesture, and to identify the one of the commands corresponding to the matching gesture; and

a wireless interface operable to transmit the identified command to a remote receiver for delivery to the remote device.

The Rejections

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Ide	US 5,598,187	Jan. 28, 1997
Lapidot	WO 01/86920 A2	Nov. 15, 2001
Ishida	US 2004/0061621 A1	Apr. 1, 2004

(filed Sep. 18, 2003)

Claims 1-6, 8-12, 14-18, and 20 stand rejected as being unpatentable under 35 U.S.C. § 103(a) over Ide and Ishida.

Claims 7, 13, and 19 stand rejected as being unpatentable under 35 U.S.C. § 103(a) over Ide, Ishida, and Lapidot.

We refer to the Briefs (Appeal Brief filed Sep. 27, 2007, and Reply Brief filed Jan. 16, 2008) and the Answer (mailed Nov. 16, 2007) for their respective details.

ISSUE

Have Appellants shown error in the Examiner's conclusion that under 35 U.S.C. § 103, the combination of Ide and Ishida teaches or suggests the claimed subject matter? Specifically, Appellants and the Examiner disagree as to whether Ide's motion code is the same as the claimed identified command, which is transmitted to a remote receiver, as recited in independent claims 1, 8, 14, and 20 (App. Br. 10-11). Appellants further contend that no motivation exists for adding a viewable display in the mouse disclosed by Ide (*id.* at 13-14).

FINDINGS OF FACT

The following findings of fact (FF) are relevant to the issue involved in the appeal.

Ide

1. Ide relates to a spatial motion pattern input system for controlling a target device according to a spatial motion pattern of the input device. (Abstract.)

2. Ide discloses a spatial motion pattern input device, which recognizes the operator's spatial motion pattern in space to control a computer multimedia device. (Col. 2, ll. 6-14.)

3. As shown in Figure 15, Ide describes converting the motion signals into digital signals (col. 14, ll. 22-32) and storing the data corresponding to a variety of basic motion patterns (col. 14, ll. 33-34).

4. Ide acquires and transmits a motion code, indicating the corresponding basic motion pattern based on the three-dimensional movement of the control device by the operator, which causes the receiving device to execute a control process according to the motion code. (Col. 14, ll. 35-47.)

Ishida

5. Ishida relates to a remote control for driving different kinds of devices capable of wireless communication. (Abstract.)

6. Ishida discloses that a monitor may be included in the remote control apparatus for viewing by the user while the user is controlling the device. (§ [0013].)

7. Ishida further discloses that software programs for controlling different devices are stored in the remote control system, which wirelessly communicates with each remote device. (¶ [0041].)

PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966) (stating that 35 U.S.C. § 103 leads to three basic factual inquiries: the scope and content of the prior art, the differences between the prior art and the claims at issue, and the level of ordinary skill in the art). “[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. *See In re Kahn*, 441 F.3d 977, 987-88 (Fed. Cir. 2006); *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991); *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

Section 103 forbids issuance of a patent when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.”

KSR Int’l Co. v. Teleflex Inc., 550 U.S. 398, 406 (2007).

A step in the obviousness analysis is to “determine whether there was an apparent reason to combine the known elements in the fashion claimed.”

KSR, 550 U.S. at 418. A rejection for obviousness must include “‘articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.’” *Id.* (quoting *Kahn*, 441 F.3d at 988). The proper question to ask is whether a person of ordinary skill in the art would have seen a benefit to combining the prior art teachings. *Id.* at 424.

ANALYSIS

Rejection over Ide and Ishida

The Examiner proposed combining the motion detection device of Ide with the display included in the remote control device of Ishida (Ans. 3). The explanation given for why one of ordinary skill in the art would have thought it desirable to combine the references was “such that a user can control the device while viewing the build-in [sic] monitor ([0013], [0041] of Ishida)” (Ans. 4). Thus, the Examiner characterized the motion code in Ide as the claimed “identified command” and reasoned that Ide clearly suggests that the motion code is a command (Ans. 4-5).

Appellants argue that the code in Ide is sent to the remote device and then the device executes a control process according to the given code (App. Br. 11). Appellants assert that the motion code of Ide corresponds to a basic motion pattern, and not a command that is transmitted to the remote device (*id.*; Reply Br. 3). Appellants further argue that the combination of Ide with the display of Ishida is improper since a user using a mouse rarely has a reason to look away from the screen and toward the mouse having a display (App. Br. 13). Appellants reason that the mouse in Ide is still used in combination with a screen, where a cursor moves around the screen, which would not benefit from a display on the mouse (Reply Br. 4-5).

Based on the recited language in claim 1, we agree with the Examiner and find that the claimed identified command corresponding to the matching gesture reads on the transmitted motion code in *Ide*. The spatial motion pattern of the input device in *Ide* is recognized (FF 1-2) and converted into digital signals (FF 3). While the generated digital signal results in a motion code corresponding to a motion pattern (FF 4), the motion code is nonetheless transmitted to the receiving or the remote device. Once the motion code is received, the remote device executes a control process according to the received motion code (*id.*). Therefore, the transmitted motion code functions similar to a command, which also causes the remote device to start a control process according to that command.

We also find unpersuasive Appellants' argument (App. Br. 12-13; Reply Br. 3-5) that *Ide*'s disclosure teaches away from adding Ishida's display to the control device of *Ide*. As argued by the Examiner (Ans. 6), the mouse disclosed by *Ide* is a spatial control device, which is moved by the operator in a three-dimensional movement pattern (FF 4), and therefore does not need to precisely follow the cursor movement on the monitor. As disclosed by Ishida, the remote control for controlling a plurality of devices includes a monitor that is viewed by the user while the user is controlling the device (FF 5-7). Therefore, *Ide* can also benefit from such display on the spatial mouse since more information regarding the remote devices being controlled may be presented to the user. As such, the display provides information about the devices available, the specific device being controlled, or any other information related to a remote device that is being controlled. Contrary to Appellants' arguments regarding the cursor movement around the screen (Reply Br. 4-5), the display of Ishida, when combined with the

spatial mouse of Ide, does not need to display the cursor and may only display an image identifying the currently controlled remote device, as recited in claim 1.

We also disagree with Appellants' argument with respect to combinability of the references stating that the Examiner has provided no motivation or rationale for combining Ide with Ishida (App. Br. 14). In that regard, we find that Ishida discloses additional information related to the devices that may be controlled by the remote control device in the form of displayed information (FF 6). Therefore, we remain unconvinced by Appellants' arguments against combinability of the references since, using *KSR* standards, the evidence provided by the Examiner supports a finding that combining familiar elements, such as adding a display to the spatial mouse of Ide, according to known methods is likely to be obvious when it does no more than yield the predictable result of providing more information to the user.

Appellants present no additional arguments with respect to the remaining dependent claims, allowing them to fall with their base claims. Based on the reasons discussed above, we sustain the 35 U.S.C. § 103(a) rejection of claims 1-6, 8-12, 14-18, and 20 over Ide and Ishida.

Rejection over Ide, Ishida, and Lapidot

With respect to the rejection of the remaining claims, we note that Appellants rely on the same arguments presented with respect to claim 1, which we found to be unpersuasive as discussed *supra*. Accordingly, the Examiner's 35 U.S.C. § 103(a) rejection of claims 7, 13, and 19 based on the combination of Ide, Ishida, and Lapidot is sustained as well.

CONCLUSION

Appellants have failed to point to any error in the Examiner's position that: 1) Ide's motion code is the same as the claimed identified command, which is transmitted to a remote receiver, and 2) the combination of Ide and Ishida is proper. Accordingly, based on the teachings of the prior art outlined *supra*, we agree with the Examiner's position and sustain the 35 U.S.C. § 103(a) rejection of all the claims.

ORDER

The decision of the Examiner rejecting claims 1-20 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. 1.136(a)(1)(iv).

AFFIRMED

babc

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